

23 April 1971

JMM:

1. For your signature - our views on proposed Executive order to establish a legal basis for a security clearance program for direct hire employees of NATO, SEATO, and CENTO who are U.S. citizens.

2. The program responsibility will be under the Secretary of Defense. The Agency's position was arrived at through coordination with the Director of Security, via the DDS; CI, via the DDP; OGC; and the CIA Control Officer for Cosmic SEATO and CENTO documents, via the DDI.

3. In essence, the proposed Executive order will satisfy outstanding security clearance requirements for these international organizations for U.S. citizen direct hire employees and will be used primarily for secretaries, nurses, and supply personnel recruited from U.S. dependents living abroad.

LLM

OSD REVIEW
COMPLETED

26 APR 1971

Mr. Arthur B. Focke
General Counsel
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Focke:

Thank you for your letter of 13 April 1971 requesting our views with respect to the proposed order entitled "Security clearance program for United States citizens employed directly by the North Atlantic Treaty Organization, the South-East Asia Treaty Organization, and the Central Treaty Organization."

The Central Intelligence Agency has no objection to the proposed order.

Sincerely,

25X1A

John M. Maury
Legislative Counsel

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OLC: (22 April 1971)

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OLC 71-0249
April 13, 1971

Mr. Richard Helms
Director
Central Intelligence Agency
Washington, D.C. 20505

Attention: Mr. John Maury

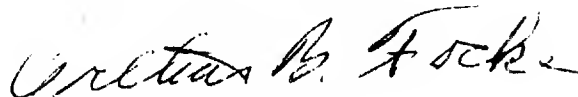
Dear Mr. Helms:

In accordance with the provisions of Executive Order No. 11030, as amended, relating to proposed Executive orders and proclamations, this Office has received the following papers (copies enclosed):

- (1) Draft Executive order entitled "Security clearance program for United States citizens employed directly by the North Atlantic Treaty Organization, the South-East Asia Treaty Organization, and the Central Treaty Organization."
- (2) Transmittal letter of the Deputy Secretary of Defense, dated March 30, 1971.

The Director of the Office of Management and Budget would appreciate receiving an expression of your views with respect to this matter as soon as possible.

Sincerely yours,



General Counsel

Enclosures

DRAFT EXECUTIVE ORDER*

Security Clearance Program for United States Citizens Employed Directly by the North Atlantic Treaty Organization, the South-East Asia Treaty Organization, and the Central Treaty Organization

Whereas, the United States has signed the North Atlantic Treaty and the South-East Asia Collective Defense Treaty, and has established permanent liaison beginning in 1956 with the Central Treaty Organization and is participating in the activities of the North Atlantic Treaty Organization (NATO), the South-East Asia Treaty Organization (SEATO), and the Central Treaty Organization (CENTO), by virtue thereof; and

Whereas, the security regulations of these three international organizations provide that each member nation shall be responsible for the security screening and security clearance of all its citizens before they are authorized access to the Organization's TOP SECRET, SECRET, or CONFIDENTIAL information; and

Whereas, there is no existing program under which United States civilians, hired directly by the organizations, can be screened and cleared for access to such Organization's TOP SECRET, SECRET, or CONFIDENTIAL information while employed by them; and

Whereas, in the participation by the United States in the activities of NATO, SEATO, and CENTO, it is in the interest of the United States that United States citizens who are direct hire employees of the civil

*This proposed order is as transmitted to the Director of the Office of Management and Budget by the Deputy Secretary of Defense March 30, 1971.

or military agencies of NATO, SEATO, or CENTO shall be reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States; and

Whereas, it is a fundamental principle of our Government to protect the interests of individuals against unreasonable or unwarranted encroachment; and

Whereas, I find that the provisions and procedures prescribed by this order are necessary to assure the preservation of the integrity of the classified information of NATO, SEATO, and CENTO, and to protect the national interest; and

Whereas, I find that these provisions and procedures recognize the interests of individuals affected thereby and provide maximum possible safeguards to protect such interest;

NOW, THEREFORE, under and by virtue of the authority vested in me by the Constitution and statutes of the United States, and as Commander-in-Chief of the Armed Forces of the United States, it is hereby ordered as follows:

Section 1. The Secretary of Defense shall establish a program and, by regulation, shall prescribe specific requirements, restrictions, and other safeguards as he considers necessary for the administration of procedures whereby "Certificates of Security Clearance" for the United States citizens directly employed by civil or military agencies

of NATO, SEATO, or CENTO may be provided to these international organizations when they so request. Such program shall also provide for the denial, revocation, or suspension of such "Certificates."

Section 2. The procedures established by the Secretary of Defense shall, insofar as is practical, be similar to those established by him pursuant to the authority vested in him by Executive Order No. 10865, as amended.

Section 3. The substance of the criteria, safeguards, and procedures provided in Sections 2, 3, 4, 5, 6, 7, and 9 of Executive Order No. 10865, as amended, shall be incorporated in the regulations of the Secretary of Defense governing the program established hereunder.

Section 4. Any authority vested in the Secretary of Defense by this order may be delegated to the Deputy Secretary of Defense or an Assistant Secretary of Defense.

THE SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

MAR 30 1971

Honorable George P. Shultz
Director, Office of Management and Budget
Washington, D.C. 20503

Dear George:

In compliance with the provisions of Executive Order No. 11030, there is transmitted herewith a proposed Executive Order entitled "Security Clearance Program for United States Citizens Employed Directly by the North Atlantic Treaty Organization, the South-East Asia Treaty Organization, and the Central Treaty Organization." It is requested that this proposed Executive Order be submitted to the President for his approval and signature.

The proposed Executive Order is needed to permit the United States to help resolve the employment problems of the NATO International Staff and SHAPE resulting from a critical shortage of secretaries, stenographers, and nurses, which exists in Belgium. This shortage could be diminished if United States citizens living abroad, such as American dependents, could be hired directly by NATO or SHAPE. A similar problem exists in NATO agencies, such as the NATO Maintenance and Supply Organization, now located in Luxembourg, where a need for personnel experienced in supply and technical fields exists which could be filled by former U.S. military personnel.

The legal need for the Executive Order arises because (1) the Supreme Court in the case of Greene v McElroy (79 S.Ct., 1400, 360US474) has made it clear that the executive branch cannot operate a security program that affects people's employment rights without explicit authorization from either the President or the Congress; (2) as the direct hire employees concerned will not be employees of the United States Government, their security clearances cannot be processed under Executive Orders Nos. 10450 or 10501; (3) likewise, such direct hire employees are not employees of a United States contractor doing classified work for the United States Government whose security clearances are processed under Executive Order No. 10865; and (4) Executive Order No. 10422, relating to United States citizens employed by public international organizations, provides only for a loyalty determination which would not meet the requirements of NATO, SEATO, or CENTO for a security clearance determination.

The present arrangement the United States has with NATO regarding the service of U.S. citizens on NATO civilian staffs does not provide for direct hire by NATO. Instead, all such U.S. civilians must be employees of the U.S. Government, who are "seconded" to positions on the NATO International Staff, normally, by the Department of State. The use of this procedure for the level of employee indicated above is not appropriate. Existing procedures would be continued with respect to middle and upper grade NATO positions, i. e., those categorized by NATO as A-3 and above.

The present arrangement stems from the requirement that the United States Government furnish security clearances for its citizens employed by NATO. This requirement is set forth in Enclosure "C" to NATO RESTRICTED Document C-M(55)15(Final), dated March 8, 1955, as amended, which established uniform security procedures for the protection of NATO classified information. Paragraphs 15 and 16(e) require each member nation to establish a National Security Authority with responsibility for providing assurance that a security determination of eligibility has been made in respect to all its citizens who are required to have access to NATO information classified CONFIDENTIAL, and above. Paragraph 28 makes each member nation responsible for accomplishing security clearances for all its citizens before they are authorized access to NATO information classified TOP SECRET, SECRET, or CONFIDENTIAL, either in national or NATO military formations or civil agencies.

The United States regulation implementing C-M(55)15(Final) is USSAN Instruction 1-69, signed on December 20, 1969, for the "United States Security Authority for NATO Affairs" (USSAN). Paragraph 28(a) of this Instruction reads as follows:

"Each department or agency will be responsible for screening all its personnel in consonance with Executive Order 10450 and Section 7 of Executive Order 10501 before they are authorized access to TOP SECRET, SECRET, CONFIDENTIAL, or RESTRICTED information either by the United States or NATO military commands or civil agencies."

This language, restricted as it is to U.S. Government "personnel" does not cover those U.S. citizens who are to be hired directly by NATO under the contemplated arrangement.

Paragraphs 36 and 37 of the Instruction provide for U.S. department or agency sponsorship of experts or consultants attending NATO conferences and meetings, and the issuing of security clearances by those departments and agencies. However, these persons are defined as holding positions "outside regular NATO employment," and U.S. Government sponsorship would be inconsistent with their direct employment by NATO.

From the above discussion, three important conclusions emerge:

First of all, the United States Government is obliged under an existing NATO Agreement to provide a certificate of security clearance for any U.S. citizen who is proposed for direct employment by a NATO civil or military organization, and who will thereby have access to NATO classified information, which includes classified information of U.S. origin.

Secondly, the United States has a national defense interest in the effective functioning of the NATO International Staff, and the staffs of SHAPE and other NATO agencies, which require access by U.S. citizens serving on these staffs to classified information of the United States and other origin; and, only the United States Government is in a position to determine the trustworthiness of its citizens.

Finally, no legal authority exists to process security clearances for U.S. citizens directly employed by NATO.

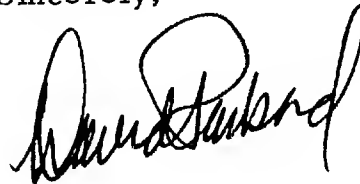
It is believed that a solution to the problem presented can be found in the extension of one of the existing security programs, the Industrial Personnel Security Clearance Program established by the Secretary of Defense pursuant to the authority vested in him by Executive Order No. 10865, as amended by Executive Order No. 10909. The job rights of a U.S. citizen hired directly by NATO for a position in which a security clearance is required are similar to those of a U.S. citizen hired for a position in U.S. industry where a security clearance is needed. It is proposed that the attached Executive Order be issued, by which the Secretary of Defense is authorized to establish procedures, similar, insofar as practical, to those established by him pursuant to the authority vested in him by Executive Order No. 10865. It is contemplated that the proposed "Security Clearance Program for

United States Citizens Employed Directly by the North Atlantic Treaty Organization, the South-East Asia Treaty Organization, and the Central Treaty Organization" will not require any additional personnel, or that any additional funds will be needed to implement it, inasmuch as the on-going program already established within the Department of Defense will be able to absorb it.

Under the direct hire procedure, which will be used only for lower grade NATO positions, i. e., those classified by NATO as A-2, A-1, B or C, the U.S. citizens involved would receive their salaries directly from NATO. In order to comply with the terms of Article XIX, Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff, Ottawa, September 20, 1951, and Article VII.2 of the International Military Headquarters Protocol, such salaries would be immune from taxation by the Government of any member nation of NATO. Pursuant to Section 911 of the United States Internal Revenue Code it will be necessary to limit NATO's direct hiring of American civilians in the aforementioned lower grade positions to those "not ordinarily resident in the United States," that is, persons who have been outside the United States for a period of at least 510 days within a period of 18 consecutive months, and whose NATO salary for any taxable year does not exceed an amount computed on a daily basis at an annual rate of \$20,000.00.

While our immediate problem relates to NATO, the proposed Executive Order includes CENTO and SEATO, as the very same circumstances exist with respect to these two organizations.

Sincerely,

A handwritten signature in black ink, appearing to read "David Patrick", is written below the word "Sincerely,".

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20 APR 1971

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MEMORANDUM FOR: Office of Legislative Counsel

ATTENTION

:

SUBJECT

: Draft Executive order entitled "Security clearance program for United States citizens employed directly by the North Atlantic Treaty Organization, the South-East Asia Treaty Organization, and the Central Treaty Organization."

In response to your request, dated 16 April 1971, this is to advise that this Office imposes no security objection to the issuance of subject Executive Order.

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Howard J. Osborn
Director of Security

20 APR 1971

MEMORANDUM FOR: Office of Legislative Counsel

ATTENTION

:

[Redacted]

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SUBJECT

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Draft Executive order entitled "Security clearance program for United States citizens employed directly by the North Atlantic Treaty Organization, the South-East Asia Treaty Organization, and the Central Treaty Organization."

In response to your request, dated 16 April 1971, this is to advise that this Office imposes no security objection to the issuance of subject Executive Order.

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[Redacted]

Howard J. Osborn
Director of Security

CONFIDENTIAL

21 APR 1971

MEMORANDUM FOR: The DDP

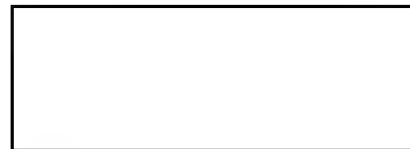
ATTENTION : The EA/DDP

SUBJECT : Draft Executive Order entitled "Security Clearance Program for United States Citizens Employed Directly by the North Atlantic Treaty Organization, the South-East Asia Treaty Organization, and the Central Treaty Organization"

The above draft has been reviewed There is no objection to its provisions.

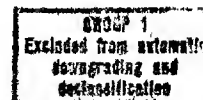
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Counter Intelligence Staff

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